IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 19580 of 2006(E)

PETITIONER:

T.K.BHASKARAN,
VEGETABLE MERCHANT, "SUCHEENDRAM",
TALAP, KANNUR.

BY ADV. SRI.V.R.VENKATAKRISHNAN (SR.)
SRI.S.ANANTHAKRISHNAN
SRI.N.K.SUBRAMANIAN

RESPONDENTS:

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1. THE SECRETARY,
KANNUR MUNICIPALITY, KANNUR.

2. KANNUR MUNICIPAL COUNCIL, REPRESENTED BY
ITS SECRETARY.

3. PADIYATH JYOTHI,
DEVISADANAM, ALAVIL, KANNUR.

4. THE TRIBUNAL FOR LOCAL SELF GOVERNMENT
INSTITUTIONS, THIRUVANANTHAPURAM.

R3 BY ADV. SRI.P.M.PAREETH
SRI.MOHAMMED SHAMEEL
SMT.C.C.JANCY
R1 & R2 BY ADV.SRI.K.K.CHANDRAN PILLAI, SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.19580 OF 2006

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DATED THIS THE 12TH DECEMBER, 2006

J U D G M E N T

Ext.P1 order passed by the 4th respondent-Tribunal for Local Self Government Institutions is challenged in this Writ Petition by the owner of the shop building which is subject matter of that order. Respondents 1 and 2 are the Secretary of the Kannur Municipality and its Council. The 3rd respondent is the tenant of the shop building. The facts, according to the petitioner, are that the shop building in question had been let out to the 3rd respondent for the conduct of a bakery. The 3rd respondent in violation of the terms of the lease started a textile shop in the building without obtaining licence from the 1st respondent. The building is more than 100 years old and is in a dilapidated condition, endangering the occupants as well as the general public. The petitioner alerted the 1st respondent of the gravity of the situation by filing a complaint. Pursuant to that, the 1st respondent took into account all the prevalent conditions and directed the 3rd respondent by notice dated 23.7.1999 to close down the unauthorised textile business. Considering the unsatisfactory structural condition of the building, a notice was issued to the petitioner under copy to the 3rd respondent, directing the petitioner to demolish the building. The 3rd

respondent filed O.P.No.19654 of 1999 and O.P.No.21185 of 1999 challenging both the notices. This Court by separate judgments allowed both the Original Petitions on the ground of violation of principles of natural justice, however, observing that the 1st respondent is free to proceed afresh in accordance with law. Pursuant to the judgments, the 3rd respondent filed application for licence for conducting textile business on 26.4.2001. On the application for conduct of textile business, the 1st respondent issued notice to the petitioner as well as the 3rd respondent. Even though during hearing, the circumstance that the condition of the building which stood abutting a very busy public road was so precarious as to endanger human lives was brought to the notice of the 1st respondent and the same was obvious from the report of the Health Inspector of the Municipality and also from the report of advocate commissioners appointed by the civil court and the Rent Control Court, the 1st respondent rejected the contention of the petitioner and allowed the licence application. Against the order allowing the licence application, the petitioner preferred an appeal to the 2nd respondent-Council. The 2nd respondent conducted a detailed hearing, relied on all relevant materials and allowed the appeal by order dated 26.9.2001. That

order was challenged by the 3rd respondent before this Court. This Court by Ext.P2 judgment dated 14.10.2005 in O.P.No.25754 of 2002 set aside that order and remanded the matter for fresh consideration by the 2nd respondent. Pursuant to Ext.P2, the 2nd respondent conducted fresh hearing. The 2nd respondent also conducted inspection of the premises and finally passed fresh order Ext.P3 dated 26.11.2005 reiterating its earlier decision to reject the application for licence. Ext.P3 was challenged by the 3rd respondent before this Court through W.P.(C)No.34814 of 2005. That Writ Petition was dismissed. However, the 3rd respondent was relegated to the 4th respondent-Tribunal. The Tribunal by Ext.P1 order dated 20.5.2006 overruled all the objections of the writ petitioner despite support by respondents 1 and 2 and directed the 1st respondent to issue licence to the 3rd respondent. Impugning Ext.P1 the petitioner prays that a writ of certiorari be issued to quash Ext.P1.

2. The 3rd respondent-tenant has filed a detailed counter affidavit denying the grounds raised by the petitioner. Produced as Ext.R3(a) is copy of the order of the 1st respondent which was cancelled by the 2nd respondent-Council. The allegation that the building in question is 100 years old and is in a dilapidated condition is

denied though it is conceded that there is some damage to the back portion of the building which remains unoccupied. It is alleged that the petitioner who is a multi-millionaire had been trying for the last few years to evict the 3rd respondent even by resorting to unlawful means. The Municipality is acting hands in glove with the petitioner in the petitioner's attempt to evict the 3rd respondent. Produced as Ext.R3(b) is copy of letter of the 1st respondent-Secretary issued to the 3rd respondent denying licence to her on the basis of the decision taken by the Council in the appeal preferred by the landlord. It is pointed out that Ext.R3(b) was quashed by this Court under Ext.P2 judgment. Ext.R3(c) is copy of the resolution of the Municipal Council dated 19.8.2002 by which it was decided to allow the appeal preferred by the landlord-petitioner. The 3rd respondent contends that this Court under Ext.P2 judgment, after quashing Ext.R3(b), directed the Municipal Council to reconsider the matter and pass fresh orders in the light of the judgment of this Court in **Marimuthu v. Director General of Police** (1999 (3) KLT 662) which was a decision taking the view that consent of the landlord is not necessary for renewal of licence of statutory tenant. The 3rd respondent complains that the direction of this Court was never complied with by the Municipal Council which

once again rejected the licence application on the ground of dilapidated condition of the building. Such a ground is not a ground for rejection of licence under the Statute and the Rules. Reference is made in this regard to Sections 411 and 443 of the Kerala Municipality Act. It is pointed out in the counter affidavit that pursuant to the direction of this Court in O.P.No.19654 of 1999, the 1st respondent-Secretary heard both sides on 29.6.2001. A further hearing was conducted on 8.8.2001 also, as per the directions in O.P.No.21185 of 1999. Apart from that, the 1st respondent personally inspected the shop room on 8.8.2001 and became convinced regarding the structural stability of the building. The 3rd respondent even produced fitness certificate from the PWD Engineer. It was ultimately that the 1st respondent overruled the objections and directed issuance of licence. Pursuant to that order, licence fee, fine and compounding fee amount to a total of Rs.9105/- was remitted against Ext.R3(d) to Ext.R3(f).

3. It is prominently contended in the counter affidavit that after the notices issued by the Municipality to the 3rd respondent requesting to stop the business and to demolish the building were quashed by this Court, no notice was issued to the 3rd respondent under Section 411 of the Kerala Municipality Act. This was why Ext.P3 order of the Council

was set aside by the Tribunal which correctly held that the alleged report of the Special Committee is unsustainable. The 3rd respondent was never issued a copy of the alleged report of the Special Committee. Ext.P3 does not even refer to the date of inspection by the Special Committee. The 3rd respondent was not issued any notice regarding the inspection. The 1st respondent had already inspected the shop room and found that the same is structurally fit. The petitioner himself is in occupation of rooms on either sides of the room occupied by the 3rd respondent. As a wholesale dealer in vegetables, he is using both those rooms. No technical report has ever been obtained to support the finding that the building is in a dilapidated condition. The report of the Special Committee which has been prepared behind the back of the 3rd respondent cannot be a substitute for a certificate from a competent engineer. The counter affidavit justifies Ext.P1 order of the Tribunal to the extent it sets aside the order of the Council. However, that part of the Tribunal's order directing the 1st respondent to initiate proceedings under Section 411 is challenged by the 3rd respondent. It is contended that the various commission reports referred to by the writ petitioner are to the effect that the building is structurally fit. The learned Munsiff also did not grant any injunction

to the petitioner against issuance of licence to the 3rd respondent. The suit was dismissed. Though the R.C.P. filed by the petitioner was allowed, the same is stayed by the Rent Control Appellate Authority and the appeal is only pending. The 2nd respondent-Municipal Council is yet to challenge Ext.P1 before this Court. Therefore, the 2nd respondent is not entitled to defend Ext.P3 order now.

4. As directed by me, the Standing Counsel for the Municipality has produced the entire files relating to various orders passed by the Secretary and the Council in respect of the subject-shop room.

5. It was Senior Advocate Sri.V.R.Venkatakrishnan who addressed me on behalf of the writ petitioner. Making arguments on the basis of the various grounds raised, Mr.Venkatakrishnan would refer to Ext.P1 order in extenso and would rely on various judicial precedents such as the judgments of this Court in **Reghunath v. Thiruvalla Municipality** (2004 (3) KLT 75) and **Sunder Raj v. Corporation of Cochin** (2001(1) KLT 536).

6. Sri.P.M.Pareeth, counsel for the 3rd respondent, resisting the submissions of Sri.Venkatakrishnan on the basis of the counter affidavit filed by the 3rd respondent, on his turn referred to Sections 411 and 443 as also sub-sections (7) and (8) of Section 509 of the

Kerala Municipality Act and to Ext.R3(a).

7. Sri.K.K.Chandran Pillai, learned Standing Counsel for the Municipality would to a certain extent support the submissions of Sri.Venkatakrishnan and submit that the Tribunal was not justified in interfering with the order of the Municipal Council.

8. As directed by me, the Standing Counsel for the Municipality made available for perusal the file relating to the proceedings so far taken by the Municipality in respect of the 3rd respondent's application for licence. The files contain inter alia the report/recommendations submitted by the Special Committee which was constituted by the Municipal Council for enquiring into the merits of the application for licence in the context of the condition of the room in question.

9. Counsel for the petitioner made available copy of the order passed by the Rent Control Court in R.C.P.No.397 of 1998. It will be immediately noticed that the eviction provisions which were invoked in the Rent Control Case were sub-letting [Section 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act] and reduction of value and utility of the building materially and permanently on account of the user of the building [Section 11(4)(ii) of the Act]. The Rent Control Court, after taking evidence, found that the tenants including the 3rd

respondent have sub-let the building in favour of the 5th respondent in the rent control case, one Santhosh. But considering the case for eviction on the ground under Section 11(4)(ii) though it was found that damages have been caused to the building and that the condition of the building is dilapidated, the Rent Control Court took the view that the evidence was short of holding that the condition of the building is attributable to any action on the part of the tenants and in that view, eviction was declined under Section 11(4)(ii). I am told that the order of the Rent Control Court has not attained finality and that the matter is pending in appeal or revision. A number of photographs of the room in question and the entire building of which the room forms only a part were also placed before me for perusal.

10. The Special Committee constituted as per Resolution dated 8.11.2005 consisted of the Chairman, the Vice Chairman, the Chairmen of the various Standing Committees and the leaders of the different political parties in the Council, and the Committee was empowered not only to conduct a local inspection but also for hearing the parties in person. The Committee gave notice to both parties for a hearing on 16.11.2005. The hearing date was adjourned to 21.11.2005 and on that day both parties appeared through advocates

and submitted their arguments. Noticing the contradictory stands taken by the parties, regarding the condition of the building, the Special Committee decided to conduct a local inspection and on 23.11.2005, such a local inspection was conducted. The Committee found that the building in the possession of the 3rd respondent consists of one room having an area of 13 feet x 11 feet with a veranda having a width of 3 ½ feet in front and another room on the northern side of the central room with an attached kolai. According to the Committee, its members were convinced that the building was so highly dilapidated that the same poses danger not only to the occupants but also to persons and vehicles who/which pass by the busy road on the side of which the building is situated. It was on that basis that the Committee decided to recommend to the Council that the application for licence submitted by the 3rd respondent ought to be rejected. It was mainly relying on the recommendations of the Committee that the Council took the decision to reject the licence application submitted by the 3rd respondent.

11. It is rather on a technical reason that the Tribunal disapproved the Special Committee's report. The circumstance that the Council which had decided to reject the 3rd respondent's application

placing reliance on the report of the Special Committee did not give a direction to the Secretary of the Council for initiation of proceedings under Section 411 of the Kerala Municipality Act for immediate demolition of the building for averting danger to life and property on account of the dangerous condition of the building. The Tribunal found this as a circumstance which arouses serious doubts about the correctness of the conclusion of the Committee. The failure on the part of the Council to issue such a direction to the Secretary prompted the Tribunal to conclude that the finding of the Committee is unsustainable. The above view of the Tribunal, I must observe, is too technical for receiving acceptance. The Council was concerned with the issue of granting licence to the 3rd respondent. It was on that issue that the Special Committee was constituted. The Special Committee consisted of the leaders of all the political parties which had representation in the Council, apart from the Chairmen of the Standing Committees, the Vice Chairman and the Chairman of the Council. It was after hearing the parties on the 21st that the Special Committee decided to conduct a local inspection which was conducted on the 23rd. Though I do not want to express any opinion now on the correctness of the findings entered by the Special Committee regarding the

condition of the building, it will certainly be noticed that the condition of the building is far from satisfactory. Though it may not be correct to say that the entire building is on the verge of collapse as the landlord exaggerates there are enough materials on the basis of which it could safely be concluded by anybody that the ante rooms and the hindmost room having an area of 3.40 metres x 2.10 metres and the kolai portion are dilapidated to a stage beyond repairs. It appears to me that there is actual occupancy in only the front portions of the building. The photographs relating to the hind portions of the building reveal that those portions are actually in a dangerous condition. Though the 3rd respondent claims that the Assistant Engineer of the P.W.D. has issued a certificate regarding the strength and durability of the building, it is to be noticed that on the basis of a report submitted by the Municipal Engineer in charge of the First Circle on 22.3.2006, the Secretary has already passed orders cancelling the licence of the occupants of the rooms bearing Nos.530 to 532, three other rooms in the larger building consisting of the subject-room. The defence of the 3rd respondent before the Rent Control Court to the ground of reduction in value and utility of the building was only that the present state of the building is not attributable to any misdeeds on her part

but is due to old age of the building.

12. The 3rd respondent is a statutory tenant who is yet to be evicted in due process of law. But the decision of this Court in **Sunder Raj** (supra) clearly lays down that even when a petition is pending before the Rent Control Court, the Municipality can, independent of those proceedings, have recourse to the procedure envisaged by Section 411 of the Act, if the condition of the building warrants resort to such procedure. This Court in **Reghunath's** case (supra) held that if the structure as a whole is unsound and has become precariously feeble, then even notice need not be issued to the tenant and it will suffice if notice is issued to the landlord. I don't mean to say that the condition of the building in question which significantly is not a separate building but only portion of a larger building having other rooms also is so precarious as to justify invocation of the procedure under Section 411 of the Act even without notice to the tenant. But even the Tribunal, despite the doubts expressed by it regarding the correctness of the Special Committee's report has ultimately directed that the Municipality will be free to initiate proceedings under Section 411 of the Act. To say that the procedure under Section 411 can go on simultaneously with the conduct of business on the strength of

licence readily issued is rather unsound. I have already noticed that the licences issued to at least three other occupants of the very same larger building have already been cancelled by the Municipality. The Tribunal, in my view, should have directed the Secretary of the Municipality to initiate proceedings under Section 411 in respect of the room and to finalise those proceedings within a time frame and directed the Municipal Council to take up the issue of granting licence only thereafter.

13. Mr.Pareeth, counsel for the 3rd respondent would submit that the landlord himself is doing business in vegetables in the rooms on either sides of the subject-room. It was common ground before me that the condition of all the rooms in the larger building which takes in the subject-room is alike. Under these circumstances, I am of the view that the order of the Tribunal directing issuance of licence to the 3rd respondent (who, according to the Rent Control Court, has sub-let the building to the 5th respondent in the rent control case and is no longer doing business) is liable to be set aside.

The result is that setting aside the order of the Tribunal Ext.P7, the Writ Petition will stand allowed passing the following directions:-

The direction in Ext.P7 for issuance of licence to the 3rd

respondent is set aside. The Municipality is directed to initiate proceedings under Section 411 of the Municipality Act in respect of all the rooms forming part of the larger building which takes in the room over which the 3rd respondent claims tenancy rights. The proceedings shall be with notice to the tenants and the persons in occupation of those rooms and shall be finalised within two months of commencement of the same and at any rate within three months of receiving a copy of this judgment. After the proceedings under Section 411 of the Act are finalised only will the question of issuance of licence on the application submitted by the 3rd respondent be taken up and decided by the Municipality.

The parties will bear their respective costs.

(PIUS C. KURIAKOSE, JUDGE)

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